

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

LESTER EUGENE SILER, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 3:05-cv-341
)	Edgar/Guyton
GERALD DAVID WEBBER, et al.,)	
)	
Defendants.)	

NOTICE OF FILING

Comes Defendants Ron McClellan, Charles Scott and Campbell County, and respectfully give notice of the Order of the Circuit Court for Campbell County, TN, staying proceedings pending resolution of the case by this Court, a copy of which is attached hereto.

Respectfully submitted this 14th day of October, 2008.

**RON McCLELLAN, CHARLES
SCOTT AND CAMPBELL COUNTY**

BY: /s/John C. Duffy
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been filed electronically. Notice of this filing will be sent by operation of the court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

Mr. Gerald David Webber, Register #31300-074
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Samuel Franklin
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Jacksboro, TN 37757

**LEGAL MAIL—OPEN IN FRONT OF
INMATE ONLY**

Dated this 14th day of October, 2008

BY: /s/John C. Duffy

IN THE CIRCUIT COURT FOR THE STATE OF TENNESSEE
EIGHTH JUDICIAL DISTRICT, CAMPBELL COUNTY AT JACKSBORO

LESTER EUGENE SILER, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 12792
)	
GERALD DAVID WEBBER, et al.,)	
)	
Defendants.)	

ORDER

This case has been assigned to the undersigned judge by an order of the Chief Justice entered May 2, 2008.

By a prior letter, the Court requested briefs concerning information on the nature and status of the case. The deadline for the filing of briefs has now passed. The Court notes that it has received only three such briefs, and none were from parties that are currently proceeding pro se. The Court is aware of the history of this case as well as the discussion of the underlying facts and criminal convictions contained in United States v. Carroll, 189 Fed. Appx. 450 (6th Cir. 2006). The chronology of the federal civil litigation is found in an order entered in Siler v. Webber, 2008 WL 400448 (E.D. Tenn. Feb. 12, 2008).

I. Previously Set Dates

Based upon the briefs of the parties, the Court continues the trial, which was previously set for August 18-22, 2008; trial of

this matter will be reset by a future order. Similarly, the previously established deadlines for the filing of dispositive motions and the taking of discovery are hereby vacated.

II. Schedule for Mr. Mitchell's Motion to Withdraw

The Court concludes that only one of the motions currently pending needs to be heard: Mr. Mitchell's motion to withdraw from representation of defendant Shayne Christopher Green. This order sets out below a schedule to govern the disposition of this motion.

Mr. Green's name and address do not appear to be on the certificates of service for either Mr. Mitchell's motion to withdraw or his separate notice of hearing for that motion.¹ To ensure that Mr. Green receives notice of this motion and is allowed an opportunity to be heard, Mr. Mitchell shall please forward a copy of this order to his client and file a renewed motion seeking the Court's permission to withdraw from this case. This motion should be filed by **Friday, July 18, 2008**. The motion shall be properly noticed to Mr. Green and shall clearly inform him that, if counsel's motion is granted and he has not secured new counsel by **Friday, August 29, 2008**, he will then be deemed pro se. (It should also inform him that copies of all filings made with the Circuit Court Clerk from this point forward shall be mailed to the undersigned at 708 Metropolitan Courthouse, Nashville, TN 37201.)

¹ The Court acknowledges that Mr. Green's name does appear in the "cc" of Mr. Mitchell's April 7, 2008 cover letter to the Circuit Court Clerk.

Opposition to the motion, if any, shall be filed by **Friday, August 1, 2008.**² The motion to withdraw must conspicuously indicate this deadline. A party's failure to file a timely response will result in the Court's presuming that the silent party has no opposition, and such a failure will be deemed a waiver of the issue.

If no opposition is timely filed, Mr. Mitchell shall submit to the Court a proposed order granting his motion. The proposed order must include language indicating that Mr. Green has until Friday, August 29, 2008 to obtain new counsel or be deemed pro se.

If new counsel is retained by Mr. Green at any time prior to submission of the order granting permission to withdraw, a notice of substitution of counsel shall be filed and there will be no need for the order granting Mr. Mitchell's withdrawal.

III. Stay of Proceedings

Other than with respect to the one motion referenced above, this case is stayed pending trial of the federal civil action. Trial of the federal case is currently set to commence on March 10, 2009. See Siler, 2008 WL 400448 at *2. The complaint in that case was filed July 6, 2005 - one day prior to the filing of the state action, which was filed July 7, 2005. See id. at *1. The two

² The Court acknowledges that the plaintiffs' brief in response to the Court's recent inquiry states their general opposition to the withdrawal of any counsel. Notwithstanding this stated position, the plaintiffs will still need to file formal opposition to Mr. Mitchell's motion by the August 1st deadline setting forth their reasons and citing any applicable law if they wish to have their opposition considered by the Court

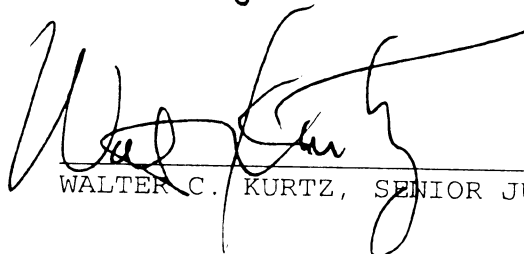
cases are redundant. The complaint in the federal case not only alleges federal causes of action but also alleges numerous pendent state law causes of action which are identical to the state law claims raised in the state proceedings. When a previously filed suit stating similar claims is pending in another court, a court will normally stay the subsequently filed action. See, e.g., Prezant v. De Angelis, 636 A.2d 915, 919 (Del. 1994); see generally 1 Am. Jur. 2d Actions § 72 (2005) (stay of state case pending outcome of previously filed federal case). This case is appropriate for the issuance of a stay.

Accordingly, the proceedings in this case are stayed except for the one pending motion to withdraw discussed above.

VI. Courtesy Copies

Finally, it is made the order of the Court that courtesy copies of all filings made with the Circuit Court Clerk from this point forward shall be mailed to the undersigned at 708 Metropolitan Courthouse, Nashville, TN 37201.

This the 10 day of July, 2008.


WALTER C. KURTZ, SENIOR JUDGE

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